Southfork Systems, Inc. *and* United Food and Commercial Workers Local Union No. 455, AFL–CIO and Industrial, Technical, and Professional Employees Division of District No. 1, MEBA/NMU, AFL–CIO, Party in Interest. Case 16–CA–15263

November 23, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On May 5, 1993, Administrative Law Judge David G. Heilbrun issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel filed an answering brief to the Respondent's exceptions.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.[1]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Southfork Systems, Inc., San Antonio, Texas, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] We note that a successor employer is ordinarily free to set the initial terms and conditions of employment. See *NLRB v. Burns Security Services*, 406 U.S. 272, 294 (1972). However, in this case, Respondent's bid for the Army contract required that it agree to be bound to any existing collective-bargaining agreement. There was such an agreement in this case. Accordingly, the judge correctly ordered Respondent to make payments into the Union's trust funds, as required by the collective-bargaining agreement.

Elizabeth Kilpatrick, for the General Counsel.
Jeffrey A. Walker, of Jackson, Mississippi, for the Respondent.
Richard L. Elliott and *Bob Comeaux*, of Houston, Texas, for the Charging Party.

DECISION

STATEMENT OF THE CASE

DAVID G. HEILBRUN, Administrative Law Judge. This case was tried at San Antonio, Texas, on May 27 and 28, 1992. The charge was filed October 9, 1991, by United Food and Commercial Workers Local Union No. 455, AFL–CIO (Charging Party or UFCW) and the complaint issued December 4, 1991. The primary issue is whether Southfork Systems, Inc. (Respondent) extended collective-bargaining recognition to Industrial, Technical, and Professional Employees Division of District No. 1, MEBA/NMU, AFL–CIO (ITPE/NMU) for a unit of employees not uncoercedly represented by that labor organization, in violation of Section 8(a)(1), (2), and (5) of the National Labor Relations Act.

On the entire record, including my observation of the demeanor of the witnesses, and after consideration of briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a Florida corporation which annually provides food and related services to the United States valued in excess of $500,000. It has engaged in the operation of dining halls and related food services at the U.S. Army Fort Sam Houston located in San Antonio, Texas, where during the last 3 months of calendar year 1991, and in the conduct of such operations, it purchased and received goods and services valued in excess of $5000 directly from suppliers located outside the State of Texas. On a projected basis in the conduct of such operations for the 12-month period commencing on or about October 1, 1991, it would have purchased and received at that location goods and services valued in excess of $50,000 directly from suppliers outside Texas. On these admitted facts I find that at all material times Respondent has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and, as is also admitted, that both UFCW and ITPE/NMU are each a labor organization within the meaning of Section 2(5) of the Act. Further, I find that Respondent's described operations exert a substantial impact on the national defense. *Ready Mixed Concrete & Materials*, 122 NLRB 318 (1958); cf. *Castle Instant Maintenance/Maid*, 256 NLRB 130 (1981).

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Case Summary*

Respondent contracted to provide full food service at military facilities in Texas. The employees at one location to be serviced had been represented for collective-bargaining purposes by the Charging Party. The employees at other locations assumed by Respondent had been represented by ITPE/NMU.

On the effective date of takeover from prior food service contracting firms, Respondent recognized ITPE/NMU as collective-bargaining representative for employees of all three locations involved as a broad single unit. General Counsel contends that violations of the Act arose from Respondent's failure to continue recognition of the Charging Party at the single location.

B. *General Chronology*

The military dining halls which this case concerns are two at Fort Sam Houston known as building 1350 (#1350) and building 2789 (#2789), plus one at 25-mile distant Camp Bullis known as connected buildings 5107/5106 (#5107). In the past, #1350 had been operated by United Food Services, a food service contractor having recent annual collective-bargaining agreements with UFCW for its employees. The last such labor contract had a duration of calendar year 1991.

Dining halls at #2789 and #5107 had in the recent past been operated by Delta Food Service. This military food service contractor had a collective-bargaining agreement with

ITPE/NMU for its employees as an addendum to the parties' earlier national agreement. This local labor contract was effective to at least the last quarter of 1991.

Early in 1991, the Army generated bidding for food service at these locations, and Respondent maintained its interest in this prospect as the year passed.[1] Early in August, Respondent transmitted its response to a modified bid solicitation, describing their proposed service as to: ''Provide all resources necessary to perform full food services'' at the three dining facilities involved. An award under the Service Contract Act resulted from the Army on September 10.

On August 1, Respondent had executed a 3-year collective-bargaining agreement of short retroactive effect with ITPE/NMU, which was essentially a master agreement rooted at Respondent's Palm City, Florida headquarters. Simultaneously an addendum was executed by these same parties for Respondent's food service operations at Lackland AFB, Texas. An addendum of this same general type and purpose, particularly as to wage rate setting, was also later reached by the parties on authority of the national agreement for application to the three Army dining facilities here involved. This second addendum was executed on October 1.

Respondent's president is Albert Kirchner, its vice president is Bernard Sher, and its secretary/treasurer is John Swindle. These officials were active in securing the contract award, and in operational startup planning during late summer 1991. Darrell Lowe, formerly United Food Services' project and dining facility manager for #1350, was hired to be project manager for the combined three dining halls. Each location was also now to have its own dining facility manager. The person selected for #1350 was Georg Weimann, who had been a first cook for United Food Services at that location. As contemplated in the addendum of October 1 with ITPE/NMU, the classifications to be utilized by Respondent for these operations included cook, salad maker, clerk, cashier, storeroom driver, and mess attendant. Job applications were solicited from all obvious sources. These were not only current employees at the locations to be assumed by Respondent on October 1, but also civil service employees of the vicinity and several dozen persons that had become surplus to Respondent's operations at Lackland AFB.

After all hiring decisions had been made the result was a work force of 87 persons in place for the commencement of Respondent's three-location operations on October 1. This number broke down to 26 former United Food Services employees, 33 former Delta Food Service employees, 14 civil service employees, 7 former Lackland employees, and 7 others who were simply new to the scene. The 26 former United Food Services employees were hired from the larger work force of 36 persons that had staffed #1350.

About a week prior to October 1, ITPE/NMU Representative Pat Foley had supplied Respondent with the accumulation of membership and dues deduction authorization cards from various Delta Food Service employees. More significantly, Foley delivered a letter to Swindle (nominally addressed to Kirchner), on October 1, further supplying ostensively current membership and dues deduction authorization cards from 70 persons in their new capacity as employees of Respondent. This act associated to Kirchner's earlier agreement that same day to recognize ITPE/NMU as bargaining representative for all employees of the assumed operations. The most that is known of these dynamics is Swindle's testimony that Kirchner had ''satisfied himself'' that a 51-percent showing among the total employees had been made by ITPE/NMU. In further accord with those dealings a memorandum of understanding dated October 1, was signed between ITPE/NMU and Respondent, reciting the demonstration of majority representation and contemplating contract negotiations for the food service employees of Fort Sam Houston. The addendum described above was fully in accord with such a contemplation. Swindle's actual inspection of the cards occurred at his first convenient opportunity to do so, an estimated week or 10 days later.

On October 1, Kirchner assembled the staff at #1350 to introduce Foley to them, and encourage that they sign his ITPE/NMU membership cards. When employee Sabine McLaughlin inquired why she should join a different union, Foley answered her as total information to the group that ITPE/NMU had ''take[n] over'' and she would not work there without signing. The making of this utterance was credibly corroborated by employee Edna Munoz, who remembered Foley saying that without signing for his union the employees would not ''have a job.''

Representatives of UFCW had ''started hearing rumors'' of new developments possibly affecting their bargaining unit as far back as early August. On October 1, UFCW official Richard Elliott was called by a member at #1350 about the seeming takeover. Elliott immediately wrote to Sher reaffirming his organization's representation and contractual status, with cautionary language as to unlawfulness of recognizing another labor organization under the circumstances. The letter was not answered and followup occurred when UFCW Field Assistant Roy Davila, accompanied by Unit Representative Lupe Dominguez, met with Sher about October 7 in San Antonio. The meeting was inclusive, as both Davila and Dominguez uncontradictedly testified that Sher said Respondent was willing to simply let the NLRB resolve any protest.

Respondent's assumed operations at the Fort Sam Houston and Camp Bullis locations were essentially comparable to what had existed before in purpose, practice, and utilization of similar employees in fulfillment. The essential cycle was that of menu planning, food issue, serving of military personnel at mealtimes, inventory accounting, and revenue reconciliation. Respondent's uniformed work force included dining facility attendants (DFAs), who generally cleaned up after each surge of activity at mealtimes. Respondent was also subject to Army oversight as to quality and conformity of contract fulfillment, and it rectified each item reported as a deficiency in service. The specific job of stockroom clerk and driver, held transitionally from United Food Services to Respondent by Debra Beckman, was unique in that she regularly performed delivery of rations to the locations other than #1350. Beyond this instance of employee contact between buildings, the amount of interchange was minor and sporadic.

C. *Contentions*

General Counsel contends principally that Respondent became a classic successor to the former dining hall contractor at #1350, and thus inherited the presumptive validity of

[1] All dates and named months hereafter are in 1991, unless otherwise indicated.

UFCW's representative status for employees there. Relatedly, General Counsel disputes an argument that the bargaining unit at #1350 had, by accretion, merged into a larger unit of the three locations to be coordinately served from October 1 onward. General Counsel relies heavily on doctrine that a single unit location of a multifacility employer is presumptively appropriate, and that circumstances here do not permit an obliteration of such separate and distinct identity. Finally, General Counsel contends that Respondent's recognition of ITPE/NMU was unlawful because that labor organization did not represent an uncoerced majority of employees under any view of unit appropriateness.

Respondent contends that factors of labor relations policy and practice, employee interchange, geographic proximity, and integration of operations require finding that a single-facility unit must be viewed as inappropriate here. Further, Respondent fully argues that the #1350 location has become an accretion to the larger, restructured operations, and that as only an unidentifiable segment of such an enterprise it could no longer exist for separate collective-bargaining purposes. Finally, Respondent contends that the complaint in this case is defective in not alleging as a basis for litigation that Respondent had unlawfully recognized ITPE/NMU as an exclusive collective-bargaining representative for the overall three-facility unit.

D. *Discussion*

I am inclined to agree with General Counsel's view of this case. At the outset both parties claim general support for their contentions in *NLRB v. Burns Security Services*, 406 U.S. 272 (1972). As is now fully settled that case held where a successor employer continues former operations with a majority of its predecessor's employees it must recognize the labor organization which represented them. As Respondent observes this decision assumed the ''bargaining unit remained unchanged,'' and this factor is a critical point in controversy.

The substantially comparable continuity in acquired operations results in a legal showing of successorship when (1) the business of both employers is the same, (2) employees continue in their same jobs and working conditions under the same supervisors, and (3) the new entity basically has the same body of customers. *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27 (1987).

A successorship showing is adequately made here inasmuch as meal serving in #1350 continued without apparent change, and by utilizing the same core employees in similar ways as before. The elevation of Weimann from his important role in food preparation to be the facility manager is comparable to the employees remaining under the same supervision, particularly with Lowe as the new project manager overall. Finally, the same body of customers was served whether this is viewed as the Army in its contracting role or the unpredictable mix of military personnel that were fed each day.

As to the accretion issue, Respondent relies on *Federal Electric Corp*., 167 NLRB 469 (1967). I do not find that case ''remarkably similar'' to the facts here as Respondent contends. In *Federal Electric* an absorption into a larger operation was such a ''distinct change'' as to leave the old entity ''no longer identifiable'' but by name. No such radical disappearance has at all occurred here, and on the contrary #1350 is not shown to have been changed in any appreciable way. The Board once contrasted its *Federal Electric* decision with circumstances in which physical assets remained intact and a former manager continued in the same position under a new owner. These and other facts were not found to be such a ''basic change'' as to be of the ''magnitude [warranting] controlling significance.'' *Ranch-Way Inc*., 183 NLRB 1168 (1970). In a later unit determination case the Board held that history of separate bargaining was ''completely neutralized'' by extensive changes causing true integration of a former operating department. *Consolidated Film Industries*, 207 NLRB 385 (1973).

Gitano Distribution Center, 308 NLRB 1172 (1992), is instructive on the point. In a most fundamental sense the Board emphasized its ''restrictive policy'' as to finding accretion to have occurred, because of reluctance rooted in policy of ''depriv[ing] employees of their basic right to select their own bargaining representative.'' This approach allows finding a valid accretion only when the employee group in question has little or no separate identification and, conversely, shows an overwhelming community of interest with the preexisting unit to which they are purportedly accreted. Although the Board noted in *Gitano* that performance of different work could affect a decision looking at two employee groups in an accretion case, the fact situation did not show the requisite community of interest to any overwhelming degree. *Gitano* further held that a high degree of employee interchange and the presence of common day-to-day supervision between groups were both factors that, where present, would tend to support a finding of accretion.

E. *Holdings*

Respondent's extensive showing of the closely structured circumstances present in its assumption of the Fort Sam Houston Food Service is not enough to overcome the strong separate identification that cloaked #1350's prior operations. The Army's intricate bid requirements under its solicitation, commonalty that resulted from the award as to contract fulfillment, similarity of employee skills utilized in the different locations, and uniform standards of quality review, left a generally accepted outlook that a single enterprise or business project had resulted. These factors do not however, singly or in the aggregate, sufficiently detract from the showing of a stable, very tangible, and freestanding unionized operation of at least several years duration as was the case at #1350.

Respondent argues that employee interchange between locations is shown to be significantly influential to the issue; a point that General Counsel seeks to refute and has developed a tabulated analysis in support of such opposition. While I favor General Counsel's claim that employee interchange is not of a significance which Respondent would give it, I do so primarily for a different reason. General Counsel has identified that of the overall 121 persons employed at all buildings of the project from October 1 to just before the hearing, a total of only 26 should be associated to the factor of employee interchange.

First of all I use a smaller statistical cohort than General Counsel because of the particular implications of how, when, and where the working hours of relevant employee interchange took place as shown from payroll records. The situation of Beckman is well known, and payroll records show

her working time costed to other buildings in the aggregate of 4 percent. Only six other employees have a higher ''transfer'' percentage as General Counsel has headed the tabulation. However in five of these cases there are reasons to discount or disregard the person's job history as an *employee interchange* factor in the accretion analysis. Jesus Montez is shown as the highest at 32 percent. However, this was all compressed into the inclusive period November 9–27, during a total employment that ended after 3 months. Michelle Duvall showed 16 percent, however her ''transfer''-interchange occurred exclusively between buildings #2789 and #5107 (or vice versa), a dynamic that is irrelevant to whether an existing bargaining unit at #1350 should be accreted. Velia Sanchez is attributed a 15-percent amount, however she worked at building #2789 on October 1 only and then, after intervening receipt of holiday pay and a 3-week hiatus, was assigned to #1350 for the brief balance of her overall employment. I believe this pattern of utilization as to Sanchez shows not an instance of employee interchange, but instead merely a job transfer as that notion is understood in both a collective-bargaining and general employment setting. Cf. *Atlantic International Corp*., 228 NLRB 1308 (1977). As to Gloria Manzur, with a tabulated 7 percent of her hours, these were all spent in building #5107 rather than her home #2789. As with Duvall, above, I disregard Manzur as a factor in the analysis for this reason. Irma Garcia had 5 percent of her hours entered for the tabulation, however this person was employed for only 1 month and I disregard her instance as statistically unreliable to the point of reference. Only Ernest Palomo, showing 7 percent out of more than 700 hours worked, represented a true instance of legally significant employee interchange out of the group of 6 I am addressing here.

As to those with a ''transfer'' number below Beckman, I disregard the inconsequential showings under 1 percent, which was the case with 10 of the listed persons. Considering then only Palomo and Beckman plus nine others, I note that in many of the latter cases the ''transfer'' credit for hours in a day represented only a part-time stint on the job or only a part of the person's workday with the balance completed back at their home building. However, even here the noninvolvement at #1350 in cross-utilization (Ana Perez), or probable tabulation error (Jo Ann Martinez), coupled with a no more than 4-percent tabulated showing, leaves me unconvinced that such patterns represent the type of interchange contemplated in *Gitano*, supra. This final group includes Barbara Weimann, whose 58 hours of work as a 5-percent attribution to the ''transfer'' character all occurred between the inclusive dates of December 23 and January 1, 1992. Considering this as the most concentrated holiday period of the year, and the definite intimation of relationship to then Facility Manager Georg Weimann, I am skeptical about the validity of factoring her situation. However, the record does not disclose what I suspect is the case, and for this reason I only note, but do not rely on, this apparently special circumstance in the actual adjudicative process. What does eventuate from all the above is a largely watered-down display of what is employee interchange of a definite and traditional type, and an overall result from which I hold that this important factor has not been established to Respondent's benefit for purposes of the accretion issue.

As to a second especially important factor in an accretion case I first note that it is Georg Weimann whose supervisory office is actually within the #1350 dining facility where employees go about their tasks. It is true that Project Manager Lowe's own office is at the same part of this military post, but elsewhere in what even he described as a ''giant building.'' It is also true that Lowe is instrumental in employee relations matters at #1350 along with the other two locations. This does not however really constitute ''day-to-day'' supervision by a fair meaning of that phrase. In this sense the evidence advanced by Respondent of Lowe's approving clearance of documents relating to attendance, promotion, leave of absence, vacation, and discipline is largely unavailing to support its theory of the case.

On a fundamental point involved in accretion matters I hold, as preliminarily intimated above, that the food service operation at #1350 remained a strongly self-identified activity. This appears so not only because of uninterrupted continuity with 26 of the same employees, but also a physical site where so many military personnel unpredictably, yet frequently, patronized for daily meals completion. Granting that a similar function is performed elsewhere at project sites, the ''up the hill'' reputation of building #2789, coupled with Camp Bullis' considerable distance away, lends weight to a view that #1350 is a significant place unto itself. This seems true at least with respect to weighing the operational facts here against a policy basis of providing single-location employees an opportunity of having a representational choice, and particularly where an established collective-bargaining relationship has provided past stabilizing effect. I note the periodic ''Employee of the Month'' selections from among those of the multifacility project, but consider this feature of the workplace a largely ceremonial, morale-boosting, and ultimately inconsequential consideration to the case. Cf. *Staten Island University Hospital*, 308 NLRB 58 (1992); *Honeywell, Inc*., 307 NLRB 278 (1992).

Beyond accretion principles the complaint in this case also alleges an 8(a)(2) violation. As to this, General Counsel has further tabulated that of the 70 authorization cards intended as a showing of interest when delivered by Foley to Swindle on October 1, 30 of them bore a state of signing subsequent to October 1. I confirm the accuracy of this number from the documentary evidence, noting too that several more are ambiguous as to validity for showing of interest purposes because of being undated (except by a common print stamp), or of probable inadvertent misdating (employees George Chisholm, Amando Garcia, Dwight Green, and Ernest Tovar). More importantly, the cards acquired from #1350 employees were rendered after an outspoken threat to an assembled group that job continuation was conditioned on offering this support of ITPE/NMU. In consequence, the cards from such persons were tainted at the outset by this form of plain coercion. The twofold arithmetical result of reducing ITPE/NMU's proffered majority showing from a requisite 44 to barely 20, means that recognition by Respondent was improper from the very beginning. Having found that #1350 did not accrete to the locations formerly operated by Delta Food Service, I hold that Respondent's recognition ITPE/NMU was extended to a labor organization not representing an uncoerced, unassisted majority of employees in the presumptively appropriate #1350 unit, and thus a violation of Section 8(a)(2), as alleged. See *Medin Reality Corp*., 307 NLRB 497

(1992). I acknowledge Respondent has argued the technical point that General Counsel's complaint did not form a basis for, nor was there litigation of, a specific allegation that Respondent has unlawfully recognized ITPE/NMU in a larger three-facility bargaining unit. This argument is simply devoid of persuasiveness for the case openly challenged Respondent's actions and it is uncontradicted that Respondent's chief official had deferred resolution of the representation question to Board proceedings. The *Indianapolis Mack Sales & Service*, and *Reliable Electric Co*. cases (288 NLRB 1123 (1988), and 286 NLRB 834 (1987), respectively) cited by Respondent on this point in its brief are insufficient to give validity to such posttrial assertion.

CONCLUSIONS OF LAW

1. Respondent Southfork Systems, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent Southfork Systems, Inc. constitutes a successor employer to United Food Services with regard to food service operations at building #1350, Fort Sam Houston, Texas.

3. United Food & Commercial Workers Local Union No. 455, AFL–CIO and Industrial, Technical, and Professional Employees Division of District No. 1, MEBA/NMU, AFL–CIO are each a labor organization within the meaning of Section 2(5) of the Act.

4. Respondent Southfork Systems, Inc. violated Section 8(a)(1) and (2) of the Act on October 1, by recognizing ITPE/NMU as collective-bargaining representative of its employees at #1350.

5. An appropriate unit of food service employees at #1350 is:

> All full-time and part-time employees employed by Southfork Systems Inc., at building #1350, Fort Sam Houston, Texas, excluding guards and supervisors as defined in the National Labor Relations Act.

6. By refusing to recognize UFCW in the appropriate unit described above, Respondent Southfork Systems, Inc. has violated Section 8(a)(1) and (5) of the Act.

REMEDY

Having found the Respondent violated Section 8(a)(1) and (2) of the Act, I shall recommend that it cease and desist therefrom and rescind any agreement with ITPE/NMU regarding the claimed accretion of employees at #1350 into a larger bargaining unit. Such recision shall apply for a reasonable period of time into the future, or at such time as ITPE/NMU is certified by the Board as exclusive collective-bargaining representative for an overall food service facilities operation of Respondent at Fort Sam Houston, Texas.

For immediate remedial purposes, I shall recommend that Respondent cease and desist from refusing to recognize and bargain with UFCW in the following appropriate unit:

> All full-time and part-time food service employees employed at building #1350 Fort Sam Houston, Texas, excluding guards and supervisors as defined in the Act.

I shall also recommend that in the course of such bargaining, if agreement is reached with UFCW Respondent be ordered to reduce that agreement to a written contract.

The United States Army's solicitation for bid recited that any existing collective-bargaining agreement had application to a ''successor contractor.'' The ITPE/NMU contract in effect at the time of Respondent's unlawful recognition contained a union-security clause requiring membership in that organization. I shall therefore also recommend that Respondent remit back to employees at #1350 all union dues forwarded to ITPE/NMU, and that it reimburse UFCW for unreceived union dues resulting from Respondent's actions. See *R.J.E. Leasing Corp*., 262 NLRB 373 (1982). Further, Respondent shall be ordered to pay into UFCW's health and welfare trust fund such amounts as were deferred of contribution by Respondent's actions in the manner set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). Any amounts that Respondent must pay into this benefit fund shall be determined in the manner set forth in *Merryweather Optical Co*., 240 NLRB 1213 (1979). The remedial steps to be required of Respondent shall not be construed as requiring it to abandon or vary any wage, hour, seniority, or other substantive terms of employment which they may have established in performance of the ITPE/NMU contract.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, Southfork Systems, Inc., San Antonio, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Entering into any agreement with ITPE/NMU regarding the accretion of building #1350 employees into the ITPE/NMU bargaining unit, unless and until such time as a majority of #1350 employees in that appropriate bargaining unit have selected such union as their collective-bargaining representative.

(b) Failing and refusing to recognize and bargain with UFCW for all full-time and part-time employees at the #1350 food service operation, Fort Sam Houston, Texas, excluding guards and supervisors as defined in the Act.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed them under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the unlawful agreement with ITPE/NMU regarding the claimed accretion of #1350 employees into the existing bargaining unit.

(b) Bargain in good faith with UFCW, and reduce any collective-bargaining agreement reached to a written contract.

(c) Remit ITPE/NMU dues to #1350 employees, reimburse UFCW for unreceived dues, and pay uncontributed amounts into UFCW's health and welfare trust fund.

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(d) Post at its Fort Sam Houston, Texas facilities copies of the attached notice marked ''Appendix.''[3] Copies of the notice on forms provided by the Regional Director for Region 16, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately on receipt and maintained by for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT enter into any agreement with Industrial, Technical, and Professional Employees Division of District No. 1, MEBA/NMU, AFL–CIO whereby it is agreed that food service employees of building #1350, Fort Sam Houston, Texas, will be accreted into the existing ITPE/NMU bargaining unit, unless and until such time as a majority of #1350 employees in an appropriate bargaining unit have selected ITPE/NMU as their collective-bargaining representative.

WE WILL NOT fail or refuse to bargain in good faith with United Food & Commercial Workers Local Union No. 455, AFL–CIO as continuing representative of employees at building #1350 in the following appropriate unit:

> All full-time and part-time food service employees, excluding guards and supervisors as defined in the National Labor Relations Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them by Section 7 of the Act.

WE WILL rescind any agreement we have entered into with ITPE/NMU regarding the accreting of #1350 employees into a larger bargaining unit, will refund dues improperly paid to ITPE/NMU, reimburse UFCW for union dues lost to that organization, and retroactively contribute to the UFCW health and welfare trust fund in such amounts as would have been made by continuing to fulfill the collective-bargaining agreement previously in effect between United Food Services and UFCW. Nothing contained in the National Labor Relations Board Order with respect to this case shall be construed as requiring us to abandon or vary any wage, hour, seniority, or other substantive terms of employment which may have been previously established.

SOUTHFORK SYSTEMS, INC.